

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. **SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.**

I. (a) PLAINTIFFS

Winnie Nichols and Brian Gary Nichols

(b) County of Residence of First Listed Plaintiff Atlantic
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

John F. Fox, Jr., Esquire (Fox Law, P.C.), P.O. Box 220, Plymouth Meeting, PA 19462 - 215-568-6868

DEFENDANTS

Paulina Bartolewski, Gianna Utility Construction and Kevin Crocker

County of Residence of First Listed Defendant Bucks
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☒ 2
- Citizen of Another State ☒ 2 ☐ 3
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 4
- Incorporated or Principal Place of Business In This State ☐ 1 ☒ 2
- Incorporated and Principal Place of Business In Another State ☐ 2 ☐ 3
- Foreign Nation ☐ 3 ☐ 4

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332 - DiversityBrief description of cause:
MVA caused by Defendants

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

In Excess of \$75,000

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

8-10-17

SIGNATURE OF ATTORNEY OF RECORD

John F. Fox, Jr.

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AUG 14 2017

17-3653

JP UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1395 Bally Bunion Drive, Egg Harbor City, N.J. 08215

Address of Defendant: 54 Red Rose Drive, Levittown, PA 19056

Place of Accident, Incident or Transaction: WB on PA Turnpike at MM 340.5 Upper Dublin Twp., MC, PA
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐

No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐

No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☒ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☒ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify) _____
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, _____, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: _____

Attorney-at-Law

Attorney I.D.# _____

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 8-10-17

Attorney-at-Law

31854

Attorney I.D.#

AUG 14 2017



**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Winnie Nichols and
Brian Gary Nichols

v.

Paulina Bartolewski, Gianna
Utility Construction and Kevin Crocker

CIVIL ACTION

17 3653
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

8-10-17
Date

215-568-6868

Telephone

John F. Fox, Jr.
Attorney-at-law

215-568-2352

FAX Number

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Attorney for Plaintiffs
JohnFox@JFoxLaw.Com

E-Mail Address

AUG 14 2017

JP

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WINNIE NICHOLS
1395 BALLY BUNION DRIVE
EGG HARBOR CITY, NJ 08215

and

BRIAN GARY NICHOLS
1395 BALLY BUNION DRIVE
EGG HARBOR CITY, NJ 08215

vs.

PAULINA BARTOLEWSKI
54 RED ROSE DRIVE
LEVITTOWN, PA 19056

and

GIANNA UTILITY CONSTRUCTION
9 RED ROSE DRIVE
LEVITTOWN, PA 19056

and

KEVIN CROCKER
9 RED ROSE DRIVE
LEVITTOWN, PA 19056

CIVIL ACTION

17 3653

NO.

JURY TRIAL DEMANDED

COMPLAINT IN CIVIL ACTION

Plaintiffs Winnie Nichols and Brian Gary Nichols, by and through their undersigned counsel, hereby file their complaint against defendants Paulina Bartolewski, Gianna Utility Construction, and Kevin Crocker, herein collectively referred to as "Defendants", as follows:

1. The plaintiff Winnie Nichols is an adult individual who resides at 1395 Bally Bunion Drive, Egg Harbor City, New Jersey 08215.
2. The plaintiff Brian Gary Nichols is an adult individual who resides at 1395 Bally Bunion Drive, Egg Harbor City, New Jersey 08215.
3. Plaintiff Brian Nichols is married to plaintiff Winnie Nichols.
4. Defendant Paulina Bartolewski is an adult individual who resides at 54 Red Rose Drive, Levittown, PA 19056. Upon information and belief, defendant Paulina Bartolewski was

operating a black 2014 Dodge Ram in the regular course of her employment and/or agency relationship with co-defendants Gianna Utility Construction and Kevin Crocker.

5. Defendant Kevin Crocker is an adult individual who resides at 9 Red Rose Drive, Levittown, PA 19056. Upon information and belief, defendant Kevin Crocker was the employer of defendant Paulina Bartolewski and owned the black 2014 Dodge Ram involved in this accident.

6. Defendant Gianna Utility Construction is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a principal place of business located at 9 Red Rose Drive, Levittown, PA 19056. Upon information and belief, defendant Gianna Utility Construction was the employer of defendant Paulina Bartolewski and owned the black 2014 Dodge Ram involved in this accident.

JURISDICTION

7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §1332 as the parties are domiciled in different states and the amount in controversy, exclusive of costs and interests, exceeds the sum of \$75,000.

8. Venue is proper in this judicial district pursuant to 28.U.S.C. §1391(c) as the defendants either reside or conduct substantial business in the Eastern District of Pennsylvania, and the acts giving rise to this claim, including the accident in question, occurred in the Eastern District of Pennsylvania.

FACTS APPLICABLE TO ALL COUNTS

9. On or about August 25, 2015, at approximately 9:48 a.m., plaintiff Winnie Nichols was lawfully operating her vehicle in the westbound direction on the Pennsylvania Turnpike at mile marker 340.5, Upper Dublin Township, Montgomery County, Pennsylvania.

At the aforesaid time and place, plaintiff Winnie Nichols was travelling in the left hand lane on the Pennsylvania Turnpike.

10. At the aforesaid time and place, defendant Paulina Bartolewski was operating a black 2014 Dodge Ram, owned by defendants Gianna Utility Construction and/or Kevin Crocker, traveling in the left lane behind the vehicle operated by plaintiff Winnie Nichols, and suddenly began to tailgate the vehicle operated by plaintiff Winnie Nichols, simultaneously flashing her high beams so that plaintiff Winnie Nichols would move her vehicle from the left lane to the middle lane.

11. Plaintiff Winnie Nichols could not move her vehicle from the left lane to the middle lane due to traffic in the middle lane. Defendant Paulina Bartolewski continued to tailgate plaintiff Winnie Nichols' vehicle and flash her high beams.

12. At the aforesaid time and place, defendant Paulina Bartolewski swerved her vehicle from the left lane into the middle lane, passing the vehicle operated by plaintiff Winnie Nichols, who was still travelling in the left lane.

13. Defendant Paulina Bartolewski then negligently, recklessly and suddenly swerved from the middle lane back into the left lane, thereby cutting in front of plaintiff Winnie Nichols, causing impact to plaintiff Winnie Nichols' right front quarter panel and the rear of defendants' left rear quarter panel.

14. Despite defendant Paulina Bartolewski knowing that her vehicle impacted the vehicle operated by Winnie Nichols, defendant Paulina Bartolewski did not stop and continued traveling down the Pennsylvania Turnpike.

15. The impact caused plaintiff Winnie Nichols to suffer serious injuries which are set forth below.

COUNT I
PLAINTIFF WINNIE NICHOLS V DEFENDANT PAULINA BARTOLEWSKI

16. Plaintiffs incorporate by reference paragraphs 1 through 14 inclusive of their complaint as if fully set forth herein at length.

17. At all times material hereto, defendant Paulina Bartolewski owed a duty to plaintiff Winnie Nichols to act in a manner consistent with that of a motorist of reasonable prudence.

18. The negligence, carelessness, and recklessness of defendant Paulina Bartolewski acting as aforesaid, consisted of the following:

- (a) Operating said vehicle in a careless, negligent and reckless manner, to wit, improperly tailgating the vehicle operated by plaintiff Winnie Nichols; traveling past her in the middle lane at an excessive rate of speed, and then suddenly and without warning attempt to cut back in front of plaintiff's vehicle as defendant Pauline Bartolewska tried to squeeze her vehicle between another vehicle travelling in the middle lane and plaintiff's Winnie Nichol's vehicle;
- (b) Operating said vehicle without due regard for the rights, safety, and position of plaintiff's vehicle, thereby causing the collision;
- (c) Failing to have said vehicle under full, proper, and adequate control so as to prevent the vehicle from colliding with Plaintiff's vehicle;
- (d) Operating said vehicle at an unsafe and excessive rate of speed;
- (e) Operating said vehicle at a speed which was excessive under the circumstances.

- (f) Failing to properly operate and control said vehicle so that it would not become a hazard;
- (g) Operating said vehicle in an inattentive manner and/or while distracted;
- (h) Failing to keep a proper lookout and observation;
- (i) Failing to stop or slow said vehicle to avoid a collision;
- (j) Failing to keep a safe distance from other vehicles on the roadway;
- (k) Failing to maintain a safe distance between said vehicle and the Plaintiff's vehicle;
- (l) Failing to reasonably respond to the actions of a fellow motorist;
- (m) Operating said vehicle in a manner not consistent with the conditions then and there existing;
- (n) Operating said vehicle in derogation of the duties imposed upon a motorist proceeding upon public roads/highways;
- (o) Failing to stop after she knew she hit plaintiff's vehicle, leaving the scene of the accident.
- (p) Violating the Rules of the Road and the laws of the Commonwealth of Pennsylvania governing the operation of motor vehicles on its streets and highways, which constitutes negligence *per se*;

19. The aforesaid actions of defendant Paulina Bartolewski as described above constitutes a reckless disregard for the rights of motorists on the highway including plaintiff Winnie Nichols.

20. Solely as a result of the negligence, carelessness, and recklessness of defendant Paulina Bartolewski, plaintiff Winnie Nichols has suffered injuries which are serious and

permanent in nature, including but not limited to a C4-5 bulge, C5-6 right herniation with annular tear, and C6-7 left herniation resulting in a C5-6 and C6-7 anterior cervical discectomy and fusion and instrumented arthrodesis. Plaintiff Winnie Nichols also suffered a T1-2 herniation; bulging disc annuli at L3-4, L4-5 and L5-S1; low back pain with bilateral lumbar radiculopathy; cervicgia with bilateral cervical radiculopathy and scarring on her neck from the cervical discectomy, which injuries have caused her to seek medical treatment.

21. As a result of the negligence, carelessness, and recklessness of defendant Paulina Bartolewski, plaintiff Winnie Nichols has been or will be required to receive and undergo medical attention and to expend various sums of money and to incur various expenses and she will be required to continue to expend such sums or incur such expenditures for an indefinite time in the future.

22. As a result of the negligence, carelessness, and recklessness of defendant Paulina Bartolewski, plaintiff Winnie Nichols has a medically determined physical impairment which prevents plaintiff Winnie Nichols from adequately performing all or substantially all of the material acts and duties which constitute plaintiff Winnie Nichols's usual customary activities prior to the accident.

23. As a further result of the negligence, carelessness, and recklessness of defendant Paulina Bartolewski, plaintiff Winnie Nichols has or may hereinafter incur other financial expenses which do or may achieve amounts that plaintiff Winnie Nichols may otherwise be entitled to recover including payment for medical bills.

24. As a direct result of the negligence, carelessness, and recklessness of defendant Paulina Bartolewski, plaintiff Winnie Nichols has or may hereinafter suffer severe physical pain,

mental anguish, humiliation, embarrassment and scarring and she will continue to suffer same for an indefinite time in the future.

25. As a further result of the negligence, carelessness, and recklessness of defendant Paulina Bartolewski, plaintiff Winnie Nichols suffered a loss of life's pleasures which may continue into the future.

26. As a further result of the negligence, carelessness, and recklessness of defendant Paulina Bartolewski, plaintiff Winnie Nichols has and may continue to suffer severe loss of her earnings and an impairment of earning capacity and power.

WHEREFORE, plaintiff Winnie Nichols demands judgment in her favor and against defendant Paulina Bartolewski, in an amount in excess of \$75,000 plus punitive damages, costs, expenses, attorney's fees and other amounts deemed appropriate by this Honorable Court.

COUNT II
PLAINTIFF WINNIE NICHOLS V DEFENDANT GIANNA UTILITY
CONSTRUCTION

27. Plaintiffs incorporate by reference paragraphs 1 through 26 inclusive of their complaint as if fully set forth herein at length.

28. At all times material hereto, defendant Gianna Utility Construction negligently and carelessly hired, trained, retained, and entrusted Defendant Paulina Bartolewski, to operate the vehicle owned by Defendant Gianna Utility Construction.

29. Defendant Gianna Utility Construction is derivatively and vicariously liable for the negligent, careless, and reckless conduct, including conduct that showed a reckless disregard to the rights of plaintiff Winnie Nichols, of its agent, servant, and/or employee, Defendant Paulina Bartolewski, as stated herein, pursuant to the principles of agency, vicarious liability, and/or respondeat superior.

30. Defendant Gianna Utility Construction's direct negligence and carelessness consisted of the following:

- (a) Failing to hire competent and safe employee/drivers;
- (b) Failing to properly train such employee drivers;
- (c) Hiring, retaining and entrusting Defendant Paulina Bartolewski to operate a truck when it knew or should have known that defendant Paulina Bartolewski was not capable to operate that truck in a safe manner;
- (d) Negligently hiring, training, retaining and entrusting the vehicle to defendant Paulina Bartolewski thereby causing the dangerous, careless, negligent, and reckless operation of its vehicle involved in the aforesaid accident.

31. Solely as a result of the negligence, carelessness, and recklessness of defendant Gianna Utility Construction, plaintiff Winnie Nichols has suffered injuries which are serious and permanent in nature, including but not limited to a C4-5 bulge, C5-6 right herniation with annular tear, and C6-7 left herniation resulting in a C5-6 and C6-7 anterior cervical discectomy and fusion and instrumented arthrodesis. Plaintiff Winnie Nichols also suffered a T1-2 herniation; bulging disc annuli at L3-4, L4-5 and L5-S1; low back pain with bilateral lumbar radiculopathy; cervicalgia with bilateral cervical radiculopathy and scarring on her neck from the cervical discectomy, which injuries have caused her to seek medical treatment.

32. As a result of the negligence, carelessness, and recklessness of defendant Gianna Utility Construction, plaintiff Winnie Nichols has been or will be required to receive and undergo medical attention and to expend various sums of money and to incur various expenses and she will be required to continue to expend such sums or incur such expenditures for an indefinite time in the future.

33. As a result of the negligence, carelessness, and recklessness of defendant Gianna Utility Construction, plaintiff Winnie Nichols has a medically determined physical impairment which prevents plaintiff Winnie Nichols from adequately performing all or substantially all of the material acts and duties which constitute plaintiff Winnie Nichols's usual customary activities prior to the accident.

34. As a further result of the negligence, carelessness, and recklessness of defendant Gianna Utility Construction, plaintiff Winnie Nichols has or may hereinafter incur other financial expenses which do or may achieve amounts that plaintiff Winnie Nichols may otherwise be entitled to recover including payment for medical bills.

35. As a direct result of the negligence, carelessness, and recklessness of defendant Gianna Utility Construction, plaintiff Winnie Nichols has or may hereinafter suffer severe physical pain, mental anguish, humiliation, embarrassment and scarring and she will continue to suffer same for an indefinite time in the future.

36. As a further result of the negligence, carelessness, and recklessness of defendant Gianna Utility Construction, plaintiff Winnie Nichols suffered a loss of life's pleasures which may continue into the future.

37. As a further result of the negligence, carelessness, and recklessness of defendant Gianna Utility Construction, plaintiff Winnie Nichols has and may continue to suffer severe loss of her earnings and an impairment of earning capacity and power.

WHEREFORE, plaintiff Winnie Nichols demands judgment in her favor and against defendant Gianna Utility Construction, in an amount in excess of \$75,000 plus punitive damages, costs, expenses, attorney's fees and other amounts deemed appropriate by this Honorable Court.

COUNT III
PLAINTIFF WINNIE NICHOLS V DEFENDANT KEVIN CROCKER

38. Plaintiffs incorporate by reference paragraphs 1 through 26 inclusive of their complaint as if fully set forth herein at length.

39. At all times material hereto, defendant Kevin Crocker negligently and carelessly hired, trained, retained, and entrusted Defendant Paulina Bartolewski, to operate the vehicle owned by Defendant Kevin Crocker.

40. Defendant Kevin Crocker is derivatively and vicariously liable for the negligent, careless, and reckless conduct, including conduct that showed a reckless disregard to the rights of plaintiff Winnie Nichols, of its agent, servant, and/or employee, Defendant Paulina Bartolewski, as stated herein, pursuant to the principles of agency, vicarious liability, and/or respondeat superior.

41. Defendant Kevin Crocker's direct negligence and carelessness consisted of the following:

- (e) Failing to hire competent and safe employee/drivers;
- (f) Failing to properly train such employee drivers;
- (g) Hiring, retaining and entrusting Defendant Paulina Bartolewski to operate a truck when it knew or should have known that defendant Paulina Bartolewski was not capable to operate that truck in a safe manner;
- (h) Negligently hiring, training, retaining and entrusting the vehicle to defendant Paulina Bartolewski thereby causing the dangerous, careless, negligent, and reckless operation of its vehicle involved in the aforesaid accident.

42. Solely as a result of the negligence, carelessness, and recklessness of defendant Kevin Crocker, plaintiff Winnie Nichols has suffered injuries which are serious and permanent in nature, including but not limited to a C4-5 bulge, C5-6 right herniation with annular tear, and

C6-7 left herniation resulting in a C5-6 and C6-7 anterior cervical discectomy and fusion and instrumented arthrodesis. Plaintiff Winnie Nichols also suffered a T1-2 herniation; bulging disc annuli at L3-4, L4-5 and L5-S1; low back pain with bilateral lumbar radiculopathy; cervicalgia with bilateral cervical radiculopathy and scarring on her neck from the cervical discectomy, which injuries have caused her to seek medical treatment.

43. As a result of the negligence, carelessness, and recklessness of defendant Kevin Crocker, plaintiff Winnie Nichols has been or will be required to receive and undergo medical attention and to expend various sums of money and to incur various expenses and she will be required to continue to expend such sums or incur such expenditures for an indefinite time in the future.

44. As a result of the negligence, carelessness, and recklessness of defendant Kevin Crocker, plaintiff Winnie Nichols has a medically determined physical impairment which prevents plaintiff Winnie Nichols from adequately performing all or substantially all of the material acts and duties which constitute plaintiff Winnie Nichols's usual customary activities prior to the accident.

45. As a further result of the negligence, carelessness, and recklessness of defendant Kevin Crocker, plaintiff Winnie Nichols has or may hereinafter incur other financial expenses which do or may achieve amounts that plaintiff Winnie Nichols may otherwise be entitled to recover including payment for medical bills.

46. As a direct result of the negligence, carelessness, and recklessness of defendant Kevin Crocker, plaintiff Winnie Nichols has or may hereinafter suffer severe physical pain, mental anguish, humiliation, embarrassment and scarring and she will continue to suffer same for an indefinite time in the future.

47. As a further result of the negligence, carelessness, and recklessness of defendant Kevin Crocker, plaintiff Winnie Nichols suffered a loss of life's pleasures which may continue into the future.

48. As a further result of the negligence, carelessness, and recklessness of defendant Kevin Crocker, plaintiff Winnie Nichols has and may continue to suffer severe loss of her earnings and an impairment of earning capacity and power.

WHEREFORE, plaintiff Winnie Nichols demands judgment in her favor and against defendant Kevin Crocker, in an amount in excess of \$75,000 plus punitive damages, costs, expenses, attorney's fees and other amounts deemed appropriate by this Honorable Court.

COUNT IV
PLAINTIFF BRIAN NICHOLS v PAULINA BARTOLEWSKI, GIANNA
UTILITY CONSTRUCTION, AND KEVIN CROCKER


49. Plaintiffs incorporate by reference paragraphs 1 through 48 inclusive of their complaint as if fully set forth herein at length.

50. At all times material to this cause of action, plaintiff Brian Nichols is the husband of plaintiff Winnie Nichols.

51. As a direct result of the defendant Paulina Bartolewski, Gianna Utility Construction, and Kevin Crocker's negligence, carelessness, and recklessness, plaintiff Brian Nichols has suffered the loss of society, comfort, companionship, services and consortium of his wife, plaintiff Winnie Nichols, all to his great detriment and loss.

WHEREFORE, plaintiff Brian Nichols demands judgment in his favor and against defendant Paulina Bartolewski, Gianna Utility Construction, and Kevin Crocker in an amount in excess of \$75,000 plus punitive damages, costs, expenses, attorney's fees and other amounts deemed appropriate by the Honorable Court.

FOX LAW, P.C.

BY 
JOHN F. FOX, JR., ESQUIRE
I.D. No. 31854
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Winnie Nichols and
Brian Nichols, h/w